

## ATTACHMENT V

### Pre-UIPA Laws:

Chapter 92 – Public Agency Meetings and Records,  
Chapter 92E – Fair Information Practice (Confidentiality of  
Personal Record)

## **CHAPTER 92 PUBLIC AGENCY MEETINGS AND RECORDS**

### **[PART V.] PUBLIC RECORDS**

#### **Note**

This part, enacted as Part IV, is redesignated.

**§92-50 Definition.** As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1975, c 166, pt of §2]

### **FAIR INFORMATION PRACTICE**

#### **Attorney General Opinions**

Applications for licenses are not "public records." Att. Gen. Op. 75-7.  
Referred to generally. Att. Gen. Op. 76-3.

#### **Hawaii Legal Reporter Citations**

Inspection of public records. 79 HLR 79-0117.  
Inspection of building permit application and all related materials, including building plans and specifications. 79 HLR 79-0543.

**§92-51 Public records; available for inspection.** All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person. [L 1975, c 166, pt of §2; am L 1976, c 212, §4]

#### **Attorney General Opinions**

Referred to generally. Att. Gen. Op. 76-3.

**§92-52 Denial of inspection; application to circuit courts.** Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

**[CHAPTER 92E]  
FAIR INFORMATION PRACTICE  
(CONFIDENTIALITY OF PERSONAL RECORD)**

**SECTION**

- 92E-1 DEFINITIONS
- 92E-2 INDIVIDUAL'S ACCESS TO OWN PERSONAL RECORD
- 92E-3 EXEMPTIONS AND LIMITATIONS ON INDIVIDUAL ACCESS
- 92E-4 LIMITATION ON PUBLIC ACCESS TO PERSONAL RECORD
- 92E-5 LIMITATIONS ON DISCLOSURE OF PERSONAL RECORD TO OTHER AGENCIES
- 92E-6 ACCESS TO PERSONAL RECORD; INITIAL PROCEDURE
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- 92E-9 ACCESS AND CORRECTION; REVIEW PROCEDURES
- 92E-10 RULES AND REGULATIONS
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- 92E-12 VIOLATIONS; DISCIPLINARY ACTION AGAINST EMPLOYEES
- 92E-13 ACCESS TO PERSONAL RECORDS BY ORDER IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS; ACCESS AS AUTHORIZED OR REQUIRED BY OTHER LAW

**Cross References**

Right to privacy, see Const. Art. I, §6.

**[§92E-1] Definitions.** As used in this chapter:

"Agency" means every office, officer, employee, department, division, bureau, authority, board, commission, or other entity of the executive branch of the State or of each county, but excludes:

- (1) The legislature and the council of each county, including their respective committees, offices, bureaus, officers, and employees; and
- (2) The judiciary, including the courts, and its offices, bureaus, officers, and employees.

"Individual" means a natural person.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's educational, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. "Personal record" includes a "public record," as defined under section 92-50. [L 1980, c 226, pt of §2]

**Revision Note**

Definitions restyled.

**Attorney General Opinions**

Items of information on public agency records are "personal records" of the person to whom the information pertains. Att. Gen. Op. 84-14.

**[§92E-2] Individual's access to own personal record.** Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1980, c 226, pt of §2]

**[§92E-3] Exemptions and limitations on individual access.** An agency is not required by this chapter to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the enforcement of criminal laws or any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
  - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1; or
  - (B) Information or reports prepared or compiled for the purpose of

criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or

- (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1980, c 226, pt of §2]

**[§92E-4] Limitation on public access to personal record.** No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

- (1) To a duly authorized agent of the individual to whom it pertains;
- (2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;
- (3) Pursuant to a statute of this State or the federal government that expressly authorizes the disclosure;
- (4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual. [L 1980, c 226, pt of §2]

**Attorney General Opinions**

List containing only names of holders of professional and vocational licenses and type of license held may be made available to public. Att. Gen. Op. 84-13.

**[§92E-5] Limitations on disclosure of personal record to other agencies.** No agency may disclose or authorize disclosure of personal record to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign

government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;

- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that receives federal monies. [L 1980, c 226, pt of §2]

**[§92E-6] Access to personal record; initial procedure.** Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten working days following the date of the request unless the personal record requested is exempted under section 92E-3. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1980, c 226, pt of §2]

**§92E-7 Copies.** The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form, duplication, and searching for the record. [L 1980, c 226, pt of §2; am L 1983, c 91, §1]

**§92E-8 Right to correct personal record; initial procedure.** (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1980, c 226, pt of §2; am L 1983, c 91, §2]

#### Attorney General Opinions

Right to correct personal records includes alteration of a birth certificate under section 338-15. Att. Gen. Op. 84-14.

**[§92E-9] Access and correction; review procedures.** (a) Not later than thirty business days after receipt of request for review of an agency refusal to allow access to, or correction or amendment of, a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow access to, or correction or amendment of, a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's

disagreement with the refusal of the agency to correct or amend it; and

- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1980, c 226, pt of §2; am imp L 1984, c 90, §1]

#### Attorney General Opinions

This section and section 92E-11, rather than chapter 91, govern review of agency decisions on amendment of birth certificates; where entry on agency record was "personal record" of individual, that person has right to file statement of disagreement. Att. Gen. Op. 84-14.

**[§92E-10] Rules and regulations.** Each agency shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this chapter.

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county. [L 1980, c 226, pt of §2]

**§92E-11 Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this chapter, and after appropriate administrative remedies under sections 92E-6, 92E-8, and 92E-9 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this chapter, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$100; and

- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance. [L 1980, c 226, pt of §2; am L 1983, c 91, §3]

**[§92E-12] Violations; disciplinary action against employees.** A knowing or intentional violation of any provision of this chapter, or of any rule adopted to implement or administer this chapter, by any employee or officer of

**92E-12****PUBLIC PROCEEDINGS**

an agency shall be cause for disciplinary action, including suspension or discharge, by the head of the agency. Any person may file a complaint, with the head of the applicable agency, alleging such a violation. [L 1980, c 226, pt of §2]

**[§92E-13] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law.** Nothing in this chapter, including section 92E-3, shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rule, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1980, c 226, pt of §2]